

November 20, 2000

A. Douglas Melamed, Esquire
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
10th and Constitution Avenue, NW
Washington, DC 20530

Re: USPS Regulation Concerning Commercial Mail Receiving Agencies

Dear Mr. Melamed:

By way of introduction, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before federal agencies and Congress. Implicit in our mission to represent small businesses is the duty to ensure that public policies do not erect barriers or harm competition.

Background of the CMRA Rule

On March 25, 1999, the United States Postal Services (USPS) published a final rule on *Delivery of Mail to Commercial Mail Receiving Agencies* (CMRA) in the Federal Register, Vol. 64, No. 57, p. 14385. The rule required CMRA customers to use the abbreviation PMB in their addresses rather than other terms such as “suite”, “unit”, “apartment”, etc. It also required:

- 1) CMRA customers to provide an actual address to USPS on a PS Form 1583;
- 2) CMRA owners to verify and match information on an application for a private mailbox (PMB) with information provided on the PS Form 1583;
- 3) CMRA owners or managers and each addressee to complete and sign a PS Form 1583; and
- 4) CMRA owners to submit a quarterly report to USPS with the names of new customers, current customers, and customers terminated within the last 12 months.

At the time that the rule was finalized, USPS asserted that the rule was necessary to address mail fraud. The only evidence that fraud was occurring at CMRAs was anecdotal. There were no studies to indicate the rate of fraud or support the necessity of the rule. There was also no indication that USPS had considered the impact of the rule on competition.

On March 13, 2000, USPS published a proposed rule on *Delivery of Mail to Commercial Mail Receiving Agencies* in the Federal Register, Vol. 65, No. 49, p. 13258. The purpose of the proposal was to revise the requirement that private mailbox users use the term “PMB” in their addresses. The proposed rule amends the CMRA rule that was finalized in March

1999 by allowing CMRA users to use the “#” sign as an alternative to the PMB designator. The proposal also allows CMRA users to use three-line addresses.

On August 16, 2000, USPS published the final rule. Federal Register, Vol. 65, No. 159, p. 49917. The final rule requires all CMRA users to use either “PMB” or the “#” sign in their addresses. All CMRA users must comply with the rule by August 26, 2001.

The Office of Advocacy’s Involvement in the Issue

Concerned small business owners brought the CMRA issue to Advocacy’s attention in May 1999. Since that time, the Office of Advocacy has been actively involved in representing the concerns of small businesses in USPS’ deliberations and regulatory process. Advocacy has held roundtables and conference calls with small businesses and their representatives; attended meetings with officials from USPS; and submitted comments on the issue to the Postmaster General. (See attached exhibits 1-3)

Advocacy raised several issues with USPS about the CMRA rule. These issues included:

- 1) the lack of data to support USPS’ allegations of fraud at CMRAs;
- 2) whether USPS was using its monopolistic power to eliminate or reduce competition from the CMRA industry;
- 3) the discriminatory practices that were inherent in the regulation; and
- 4) the propriety of USPS promulgating a regulation that in effect institutionalized the contractual requirements of the largest CMRA competitor, Mailboxes Etc., and imposed it on non-Mailbox Etc. customers.

To date, USPS has not addressed these concerns adequately.

The Department of Justice’s 1979 Comments USPS’ Amendments to 39 C.F.R. Parts 310 and 320

In 1979, USPS sought to amend 39 C.F.R. Parts 310 and 320. The purpose of the rulemaking was to implement “private express laws”. In the rulemaking, USPS sought to expand the definition of a letter as an addressed message recorded in or on a tangible object. DOJ submitted comments in that rulemaking to address the important policy issues regarding competition that were inherent in that rulemaking. In its comments, DOJ stated that USPS had an enforceable obligation to take competitive factors fully into account in adopting any new regulations.¹

The 1979 USPS regulation on private express laws is similar to the current PMB situation. Like the 1979 USPS regulation, the issue presented in the current PMB regulation is “whether regulation should be extended, through new and innovative

¹ .United States Department of Justice, Antitrust Division, Comments on Amendments to 39 C.F.R. Parts 310 and 320: Proposed Revisions in the Comprehensive Standards for Permissible Private Carriage of Letters, March 13, 1979, page 14.

interpretations, to prevent the erosion of a monopoly, which today is clearly threatened with commercial obsolescence.”² CMRAs offer an alternative to the traditional USPS mailbox rental. In addition to providing customers with the option of having a street address rather than a mailbox number, many CMRAs offer other services such as receiving packages from delivery services, mail forwarding for customers who are traveling, signing for mail, and facsimile services. Customers may decide to use a CMRA for a variety of reasons including security, legitimacy for a home based business, and convenience. Customers seeking such services would select a CMRA over post office box provided by USPS.

Requiring users to use “PMB” or the “#” sign in the address places an unwarranted stigma on CMRA users and places non-Mailboxes Etc. affiliated CMRAs in a precarious position. Mailboxes, Etc. made a business decision years ago to require its users to employ a “#” sign in their addresses. This was a corporate decision that was made for corporate reasons. There is no indication that using a “#” or “PMB” in an address will in anyway deter fraud or in anyway address the unsubstantiated policy issue that USPS is supposedly attempting to address. The only thing achieved by the requirement is the imposition of a corporate practice of the largest competitor in the industry on smaller members of the industry by an independent establishment of the executive branch of the government.

Before imposing such measures, USPS should have evaluated the potential impact of its actions on the marketplace as well as whether the measure would address the underlying policy concern. The impact should have been studied not only from the standpoint of the other CMRAs, but also from the standpoint of small business owners who use CMRAs and may be stigmatized by the regulation. Since USPS did not consider the economic impacts of the rule on competition, Advocacy asserts that it has not met its obligation, identified by DOJ in its 1979 “private express” comments, to take competitive factors into account in adopting the CMRA/PMB rule.

For the reasons stated above, the Office of Advocacy urges you to review the CMRA/PMB rule to determine whether USPS has met its obligations under antitrust laws. I understand that some members of Congress have made a similar request. If you

² Id. at 12.

have any questions, please feel free to contact me at (202) 205-6534. Thank you.

Sincerely,

Sincerely,

Jere W. Glover
Chief Counsel
Office of Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation